

Todd M. Friedman (SBN 216752)
 Adrian R. Bacon (SBN 280332)
 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 21550 Oxnard St., Suite 780
 Woodland Hills, CA 91367
 Phone: 323-306-4234
 Fax: 866-633-0228
tfriedman@toddfllaw.com
abacon@toddfllaw.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING)	Case No.
INC, individually and on behalf of all)	
others similarly situated,)	<u>CLASS ACTION</u>
Plaintiff,)	
vs.)	COMPLAINT FOR VIOLATIONS
	OF:
	1. NEGLIGENT VIOLATIONS
PACIFIC PRO'S INSURANCE)	OF THE TELEPHONE
AGENCY and DOES 1 through 10,)	CONSUMER PROTECTION
inclusive,)	ACT [47 U.S.C. §227(b)]
	2. WILLFUL VIOLATIONS
	OF THE TELEPHONE
Defendants.)	CONSUMER PROTECTION
	ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING INC ("Plaintiff"),
 individually and on behalf of all others similarly situated, alleges the following
 upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of PACIFIC PRO'S INSURANCE
5 AGENCY ("Defendant"), in negligently, knowingly, and/or willfully contacting
6 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA") and related regulations.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
10 a California corporation with its principle place of business also in California, seeks
11 relief on behalf of a Class, which will result in at least one class member belonging
12 to a different state than that of Defendants, a company incorporated and based in
13 California. Plaintiff also seeks up to \$1,500.00 in damages for each call; in violation
14 of the TCPA, which, when aggregated among a proposed class in the thousands,
15 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
16 diversity jurisdiction and the damages threshold under the Class Action Fairness
17 Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Northern
19 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do
20 business within the State of California and Plaintiff resides within the County of
21 Alameda.

22 **PARTIES**

23 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC ("Plaintiff"),
24 is a rooting and plumbing business in Emeryville, California and is a "person" as
25 defined by 47 U.S.C. § 153 (39).

26 5. Defendant PACIFIC PRO'S INSURANCE AGENCY, is an insurance
27 agency incorporated and based in California and is a "person" as defined by 47
28 U.S.C. § 153 (39).

1 6. The above-named Defendants, and their subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
7 Complaint to reflect the true names and capacities of the DOE Defendants when
8 such identities become known.

9 7. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendants were acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions complained
14 of herein was made known to, and ratified by, each of the other Defendants.

15 **FACTUAL ALLEGATIONS**

16 8. On or around August 25, 2017, Defendants contacted Plaintiff on
17 Plaintiff’s cellular telephone numbers ending in -1636 to solicit Plaintiff to
18 purchase Defendants’ services.

19 9. Thereafter, Defendant contacted Plaintiff on numerous occasions to
20 solicit Plaintiff to purchase Defendants’ services.

21 10. Defendants used an “automatic telephone dialing system” as defined
22 by 47 U.S.C. § 227(a)(1) to place calls to Plaintiff seeking to solicit its services.

23 11. Defendants contacted or attempted to contact Plaintiff from telephone
24 number (714) 111-2223 belonging to Defendants

25 12. Defendants’ calls constituted calls that were not for emergency
26 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

27 13. Defendants’ calls were placed to telephone number assigned to a
28 cellular telephone service for which Plaintiff incurs a charge for incoming calls

pursuant to 47 U.S.C. § 227(b)(1).

14. During all relevant times, Defendants did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).

15. Defendants placed multiple calls soliciting its business to Plaintiff on its cellular telephones beginning in or around August 2017.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

17. Plaintiff received numerous solicitation calls from Defendants within a 12-month period.

18. Plaintiff never granted Defendants any prior express consent nor was any established business relationship with Defendants in existence as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

19. Upon information and belief and based on Plaintiff's experiences of being called by Defendants after requesting they stop calling, and at all relevant times, Defendants failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, "The Classes"). The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person's cellular telephone made

through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

22. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

23. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

24. Plaintiff and the ATDS Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth in the paragraphs above.

26. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
 2 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

3 27. As a result of Defendants' knowing and/or willful violations of *47*
 4 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class are entitled an award of \$1,500.00
 5 in statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
 6 *227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

7 28. Plaintiff and the Class members are also entitled to and seek injunctive
 8 relief prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff requests judgment against Defendants for the following:

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(b)**

- 14
- 15 • As a result of Defendants' negligent violations of *47 U.S.C.*
 16 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and
 17 request \$500 in statutory damages, for each and every violation,
 18 pursuant to *47 U.S.C. 227(b)(3)(B)*.
 - 19 • Any and all other relief that the Court deems just and proper.

20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection** 22 **Act**

23 **47 U.S.C. §227(b)**

- 24
- 25 • As a result of Defendants' willful and/or knowing violations of *47*
 26 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are
 27 entitled to and request treble damages, as provided by statute, up to
 28 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
§227(b)(3)(B) and *47 U.S.C. §227(b)(3)(C)*.

- Any and all other relief that the Court deems just and proper.

JURY DEMAND

29. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 3rd day of August, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff